

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TONYA R DELATORRE**  
Claimant

**WAL-MART STORES INC**  
Employer

**APPEAL 21A-UI-02885-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (2R)**

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

**STATEMENT OF THE CASE:**

The claimant/appellant, Tonya R. Delatorre, filed an appeal from the January 4, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2021. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a cashier and was separated from employment on September 5, 2019.

Claimant took a personal leave of absence from August 14, 2019 and presented her human resources representative with a doctor’s note that allowed her to return to work effective September 5, 2019. Employer did not place claimant back on the schedule. Claimant made three attempts to be put back on the schedule but the employer never responded.

Since separation, claimant has worked in self-employment as a housekeeper.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

In this case, claimant left due to a personal illness and presented a release to return to work. However, the employer did not put claimant back upon the calendar. Since the claimant offered to return to work from her personal injury without restriction and no work was available, the separation was with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

The issue of whether claimant is able to and available for work due to self-employment is remanded to the Benefits Bureau for an investigation.

**DECISION:**

The unemployment insurance decision dated January 4, 2021, (reference 01) is REVERSED. The claimant's separation was with good cause attributable to the employer. Benefits are allowed.

**REMAND:** The issue of whether claimant is able to and available for work due to self-employment is remanded to the Benefits Bureau for an investigation.



---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

March 16, 2021  
Decision Dated and Mailed

jlb/ol

**NOTE TO CLAIMANT:**

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>